

§ 697.26

determined such measures are necessary to achieve or be compatible with ISFMP objectives, or the ISFMP, to be consistent with the national standards of the Magnuson-Stevens Act, or to meet overfishing and rebuilding requirements of the Magnuson-Stevens Act. These management measures may include, but are not limited to, continued reductions of fishing effort or numbers of traps, increases in minimum or decreases in maximum size, increases in the escape vent size, decreases in the lobster trap size, closed areas, closed seasons, landing limits, trip limits and other management area-specific measures as may be identified and recommended by the Commission prior to December 1 of the previous year. After considering public comment, NMFS may publish a final rule to implement any such measures.

(b) *Conservation equivalency measures.* The Regional Administrator may consider future recommendations for modifications to Federal regulations based on conservation equivalency for American lobster that are formally submitted to him/her in writing by the ASMFC. These recommendations must, for consideration by the Regional Administrator, contain the following supporting information:

(1) A description of how Federal regulations should be modified;

(2) An explanation of how the recommended measure(s) would achieve a level of conservation benefits for the resource equivalent to the applicable Federal regulations;

(3) An explanation of how Federal implementation of the conservation equivalent measure(s) would achieve ISFMP objectives, be consistent with the Magnuson-Stevens Act national standards, and be compatible with the effective implementation of the ISFMP; and

(4) A detailed analysis of the biological, economic, and social impacts of the recommended conservation equivalent measure(s). After considering the recommendation and the necessary supporting information, NMFS may issue a proposed rule to implement the conservation equivalent measures. After considering public comment, NMFS may issue a final rule to implement such measures.

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(c) At any other time, NMFS may publish a proposed rule, after consultation with the Commission, to implement any additional or different management measures in order to achieve ISFMP objectives or be compatible with Commission measures or recommendations or to be consistent with the national standards of the Magnuson-Stevens Act, or to meet overfishing and rebuilding requirements of the Magnuson-Stevens Act. After considering public comments, NMFS may publish a final rule to implement any such measures.

(d) Notwithstanding other provisions of this part, NMFS may publish any additional or different management measures as described herein without prior public comment, pursuant to and consistent with 5 U.S.C. 553.

[64 FR 68248, Dec. 6, 1999, as amended at 68 FR 14931, Mar. 27, 2003]

§ 697.26 EEZ Nearshore Management Area 5 Trap Waiver.

(a) *Eligibility.* Vessels eligible for limited access lobster permits under § 697.4(a)(1) and limited access black sea bass permits under § 648.4(a)(7)(i) of this chapter may request an Area 5 Trap Waiver Permit, under the procedures described in § 697.4.

(b) *Restrictions.* A vessel issued an Area 5 Trap Waiver permit under this section may engage in trap fishing for black sea bass in EEZ Nearshore Management Area 5 and is exempt from the provisions of § 697.19 and § 697.21 if such fishing is conducted in accordance with all other provisions of this section and all other Federal and state laws and regulations applicable to lobster and black sea bass fishing.

(1) A vessel issued a permit under this section may retain, land and sell an incidental allowance of lobster equal to the non-trap harvest restrictions specified in § 697.17(a).

(2) A vessel issued a permit under this section may not possess on board or deploy bait or baited traps.

[66 FR 14502, Mar. 13, 2001]

§ 697.27 Trap transferability.

(a) Federal lobster permit holders may elect to participate in a program

that allows them to transfer trap allocation to other participating Federal lobster permit holders, subject to the following conditions:

(1) *Participation requirements.* To be eligible to participate in the Federal Trap Transfer Program:

(i) An individual must possess a valid Federal lobster permit; and

(ii) If the individual is dually permitted with both Federal and state lobster licenses, the individual must agree to synchronize his or her state and Federal allocations in each area for which there is an allocation. This synchronization shall be set at the lower of the state or Federal allocation in each area. This provision does not apply to Areas 1 and 6 as neither area have a Federal trap allocation.

(iii) Individuals participating in the Lobster Management Area 1 trap fishery may participate in the Trap Transfer Program, but doing so may result in forfeiture of future participation in the Area 1 trap fishery as follows:

(A) Area 1 fishers may accept, receive, or purchase trap allocations up to their Area 1 trap limit identified in § 697.19 and fish with that allocation both in Area 1 and the other area or areas subject to the restrictive provisions of § 697.3 and § 697.4(a)(7)(v).

(B) Area 1 fishers with trap allocations in Areas 2, 3, and/or the Outer Cape Area may transfer away or sell any portion of that allocation, but, in so doing, the Area 1 fisher shall forfeit any right to fish in Area 1 with traps in the future.

(2) *Trap allocation transfers.* Trap allocation transfers will be allowed subject to the following conditions:

(i) *State/Federal alignment.* Participants with dual state and Federal permits may participate in the Trap Transfer Program each year, but their state and Federal trap allocations must be aligned as required in paragraph (a)(1)(ii) of this section at the start and close of each trap transfer period.

(ii) *Eligible traps.* Buyers and sellers may only transfer trap allocations from Lobster Management Areas 2, 3, and the Outer Cape Area.

(iii) *Debiting remaining allocation.* The permit holder transferring trap allocations shall have his or her remaining

Federal trap allocation in all Lobster Conservation Management Areas debited by the total amount of allocation transferred. This provision does not apply to Areas 1 and 6, as neither area have a Federal trap allocation. A seller may not transfer a trap allocation if, after the transfer is debited, the allocation in any remaining Lobster Conservation Management Area would be below zero.

(iv) *Crediting allocations for partial trap transfers.* In a partial trap transfer, where the transfer is occurring independent of a Federal lobster permit transfer, the permit holder receiving the transferred allocation shall have his or her allocation credited as follows:

(A) *Trap retirement.* All permit holders receiving trap allocation transfers shall retire 10 percent of that transferred allocation from the fishery for conservation. This provision does not pertain to full business transfers where the transfer includes the transfer of a Federal lobster permit and all traps associated with that permit.

(B) *Multi-area trap allocation history.* To the extent that transferred trap allocations have been granted access into multiple management areas, the recipient may elect any and all management areas for which the traps have demonstrated history.

(C) All trap allocation transfers are subject to whatever trap allocation cap exists in the involved lobster management area. No participant may receive a transfer that, when combined with existing allocation, would put that permit holder's trap allocation above the involved trap caps in § 697.19.

(v) In all allocation transfers, the buyer's and seller's initial allocations shall be calculated as being the allocation that the buyer and seller would otherwise have on the last day of the fishing year.

(vi) Trap allocations may only be transferred in 10-trap increments.

(vii) Trap allocation transfers must be approved by the Regional Administrator before becoming effective. The Regional Administrator shall approve a transfer upon a showing by the involved permit holders of the following:

(A) The proposed transfer is documented in a legible written agreement

signed and dated by the involved permit holders. The agreement must identify the amount of allocation being transferred as well as the Federal lobster permit number from which the allocation is being taken and the Federal lobster permit number that is receiving the allocation. If the transfer involves parties who also possess a state lobster license, the parties must identify the state lobster license number and state of issuance.

(B) That the transferring permit holder has sufficient allocation to transfer and that the permit holder's post-transfer allocation is clear and agreed to. In determining whether seller has sufficient allocation to transfer, the Regional Administrator will calculate the seller's pre-transfer and post-transfer allocations. The pre-transfer allocation shall be the amount of the seller's allocation as it would exist on the last day of the fishing year. The post-transfer allocation shall be the pre-transfer allocation minus the total amount of traps being transferred prior to application of the 10-percent trap retirement set forth in paragraph (a)(2)(iv)(A) of this section.

(C) That the permit holder receiving the transfer has sufficient room under any applicable trap cap identified in §697.19 to receive the transferred allocation and that the recipient's post-transfer allocation is clear and agreed to. In determining whether the buyer has sufficient room to receive allocation, the Regional Administrator will calculate the buyer's pre-transfer and post-transfer allocations. The pre-transfer allocation shall be the amount of the buyer's allocation as it would exist on the last day of the fishing year. The post-transfer allocation shall be the pre-transfer allocation plus the total amount of traps being transferred minus 10 percent of the transferred al-

location that shall be retired pursuant to the provisions of (a)(2)(iv)(A) of this section.

(3) *Trap transfer period.* The timing of the Trap Transfer Program is as follows:

(i) Federal lobster permit holders must declare their election into the program in writing to the NMFS Permit Office. Electing into the Trap Transfer Program is a one-time declaration, and the permit holder may participate in the program in later years without needing to re-elect into the program year after year. Federal permit holders may elect into the program at any time in any year, but their ability to actively transfer traps will be limited by the timing restrictions identified in paragraphs (a)(3)(ii) and (iii) of this section.

(ii) All trap transfer requests must be made in writing before September 30 each year, and if approved, will become effective at the start of the next fishing year. The Regional Administrator shall attempt to review, reconcile and notify the transferring parties of the disposition of the requested transfer before December 31 each year. Transfers are not valid until approved by the Regional Administrator.

(iii) *Year 1.* Notwithstanding paragraph (a)(3)(ii) of this section, the timing of the first year of the Trap Transfer Program is linked to the completion of the Commission's Trap Tag Database. NMFS will analyze the Trap Tag Database and when NMFS finds that the database is capable of tracking transfers for multiple jurisdictions, then NMFS will file a notice alerting the public of the date of when the Trap Transfer Program will begin.

(b) [Reserved]

[79 FR 19026, Apr. 7, 2014]

TABLE 1 TO PART 697—AREA 3 TRAP REDUCTION SCHEDULE

HISTORIC Trap Allocation	Year 2006 Trap Allocation	Year 1 - 5% Trap Reduction Effective November 2007	Year 2 - 5% Trap Reduction Effective July 1, 2008	Year 3- 2.5% Trap Reduction Effective July 1, 2009	Year 4 - 2.5% Trap Reduction Effective July 1, 2010
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
200	200	190	181	176	172
240	240	228	217	211	206